

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34683

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 666
	)	
Plaintiff-Respondent,	)	Filed: September 30, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOSEPH HAZELBAKER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

---

Appeal from the District Court of the Second Judicial District, State of Idaho, Idaho County. Hon. Jeff M. Brudie, District Judge.

Order denying Idaho Criminal Rule 35 motion for correction of an illegal sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

---

PER CURIAM

Joseph Hazelbaker was convicted of sexual abuse of a child under the age of sixteen years, Idaho Code § 18-1506(1)(b). The district court imposed a unified fifteen-year sentence with a three-year determinate term, but after a period of retained jurisdiction, suspended the sentence and placed Hazelbaker on probation. Subsequently, Hazelbaker admitted to violating several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Hazelbaker thereafter filed an Idaho Criminal Rule 35 motion for correction of an illegal sentence, arguing that his sentence is illegal in light of *Estrada v. State*, 143 Idaho 558, 149 P.3d 833 (2006), because his attorney did not advise him that he could refuse to undergo a psychological or psychosexual evaluation. The district court denied Hazelbaker's Rule 35 motion, and Hazelbaker now appeals.

The district court correctly rejected Hazelbaker's argument that his sentence was illegal because his attorney did not properly advise him regarding a psychological evaluation. Such allegations do not demonstrate an illegal sentence. An illegal sentence for purposes of Rule 35 is a sentence in excess of a statutory provision or otherwise contrary to applicable law. *State v. Alsanea*, 138 Idaho 733, 745, 69 P.3d 153, 165 (Ct. App. 2003). The facts alleged by Hazelbaker set out, at most, a claim of ineffective assistance of counsel, but a Rule 35 motion is not a vehicle to raise issues of ineffective assistance of counsel.

Even if Hazelbaker received inadequate advice from his defense attorney regarding the psychological evaluation, that deficiency would not render his sentence illegal for purposes of Rule 35. Accordingly, the district court's order denying Hazelbaker's I.C.R. 35 motion is affirmed.